



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

No. **83 - 5547**

SYLVESTER LEWIS ADAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

DAVID I. BRUCK
Attorney at Law

1413 Calhoun Street
Columbia, S.C. 29201.
(803) 252-3121

ATTORNEY FOR PETITIONER

QUESTIONS PRESENTED

1.

Whether, in this capital murder case, petitioner's rights under the Eighth and Fourteenth Amendments were violated by jury instructions which defined the term "reasonable doubt" as a "substantial doubt, a doubt for which you can give a reason," and as a "serious or strong and well-founded doubt."

2.

Whether the Eighth and Fourteenth Amendments were violated by the failure of the South Carolina Supreme Court, in its statutorily-mandated comparison of the proportionality of petitioner's death sentence with other "similar cases," to consider any similar cases in which the death penalty was not imposed.

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
TABLE OF CONTENTS	11
TABLE OF AUTHORITIES.	111
CITATION TO OPINION BELOW	1
JURISDICTION.	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.	2
STATEMENT OF THE CASE	2
HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW	4
REASONS FOR GRANTING THE WRIT	7
I. The Court should grant the writ to determine whether, in this capital case, the trial judge's definitions of reasonable doubt so diluted and weakened that constitutional principle as to have exceeded the latitude enjoyed by state courts in instructing juries concerning fundamental rights guaranteed by the Eighth and Fourteenth Amendments	7
II. The state supreme court's failure to compare petitioner's case with other similar murder cases in which the death penalty was not imposed raises substantially the same question as that now being considered by this Court in <u>Pulley v. Harris</u> , No. 82-1095.	13
CONCLUSION.	17
APPENDIX	
Opinion of the South Carolina Supreme Court in <u>State v. Adams</u> , Opinion No. 21942 (S.C., June 29, 1983)	A-1
Petition to Argue for Overruling or Modification of Precedent, dated November 17, 1982.	A-12
Order of the South Carolina Supreme Court dated December 8, 1983, denying leave to argue against precedent	A-17
Order of the South Carolina Supreme Court denying rehearing dated August 3, 1983.	A-18
S.C. Code §§16-3-20 <u>et seq.</u>	A-19

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
Alkinson v. South Carolina, 408 U.S. 936 (1972) (per curiam)(rev'g 253 S.C. 531, 172 S.E.2d 111).....	16
Beck v. Alabama, 447 U.S. 625 (1980)	5,7
Bernstein v. United States, 234 F.2d 475 (5th Cir. 1956)	10
Butler v. South Carolina, ___ U.S. ___, 32 Cr.L. 4036 (Marshall, J., dissenting from denial of certiorari)	5
Carter v. Kentucky, 450 U.S. 288 (1981)	11
Chapman v. California, 386 U.S. 18 (1967)	11
Commonwealth v. Custer, 145 Pa.Super. 535, 21 A.2d 524 (1941)	10
Commonwealth v. Robinson, 415 N.E.2d 805 (Mass. 1981)	10
Cupp v. Naughten, 414 U.S. 141 (1973)	7,11,12
Dunn v. Perrin, 570 F.2d 21 (1st Cir. 1978) ...	10
Eddings v. Oklahoma, ___ U.S. ___, 102 S.Ct. 869 (1982)	6
Estelle v. Williams, 425 U.S. 501 (1976)	7
Frazier v. State, 117 Tenn. 430, 100 S.W. 94 (1907)	8
Fuller v. South Carolina, 408 U.S. 937 (1972) (per curiam)(rev'g 254 S.C. 260, 174 S.E.2d 774)	16
Furman v. Georgia, 408 U.S. 238 (1972)	6,14,15,16
Gregg v. Georgia, 428 U.S. 153 (1976)	13,16
Harris v. Pulley, 692 F.2d 1189 (1982), cert. granted ___ U.S. ___ (March 21, 1983)(No. 82- 1095)	14
Holland v. United States, 348 U.S. 121 (1950) .	11
In re Winship, 397 U.S. 358 (1970)	5,7,8,9,11
Isaacks v. State, 337 So.2d 928 (Miss. 1976) ..	10
Jurek v. Texas, 428 U.S. 262 (1976)	14
Laird v. State, 251 Ark. 1074, 476 S.W.2d 811 (1972)	8
Owens v. Commonwealth, 186 Va. 689, 43 S.E.2d 895 (1947)	10
People v. Turner, 99 Mich.App. 233, 298 N.W.2d 848 (1980)	10
Pettine v. Territory of New Mexico, 201 F. 489 (8th Cir. 1912)	10
Powers v. State, 150 Ga.App. 25, 256 S.E.2d 637 (1979)	10

<u>Cases</u>	<u>Pages</u>
Smith v. State, 547 S.W.2d 925 (Tenn. 1977) ...	8,9
State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)	4
State v. Adams, Opinion No. 21942 (S.C., June 29, 1983)	1,3,5,6,14
State v. Butler, 277 S.C. 452, 290 S.E.2d 1 (1982)	5
State v. Cohen, 108 Iowa 208, 78 N.W. 857 (1899)	10
State v. Coleman, 20 S.C. 441 (1883)	5
State v. Copeland, ___ S.C. ___, 300 S.E.2d 63 (1982)	5,6,13,15,16
State v. Davis, 482 S.W.2d 486 (Mo. 1972)	8,9
State v. Derrico, 181 Conn. 151, 434 A.2d 356 (Conn. 1980)	10
State v. Gilbert, 277 S.C. 53, 283 S.E.2d 179 (1981)	13
State v. Harrison, 149 N.J.Super. 220, 373 A.2d 680 (A.D. 1974)	8
State v. Hyman, 276 S.C. 559, 281 S.E.2d 209 (1981)	13
State v. Keffer, 281 S.E.2d 495 (W.Va. 1981) ..	10
State v. Koon, ___ S.C. ___, 298 S.E.2d, 769 (1982)	16
State v. Maxwell, 328 A.2d 801 (Me. 1981)	10
State v. McDonald, 89 Wash.2d 190, 571 P.2d 930 (1977)	8
State v. Newman, 93 Minn. 393, 101 N.W. 499 (1904)	10
State v. Osbey, 213 Kan. 564, 517 P.2d 141 (1973)	10
State v. Rosenburg, 118 A. 207 (N.J. 1922)	10
State v. Senn, 32 S.C. 393, 11 S.E.2d 292 (1890) .	5
State v. Starnes, 213 S.C. 204, 49 S.E.2d 209 (1948)	5
State v. Taylor, 76 Idaho 358, 283 P.2d 582 (1955)	10
State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982)	13
State v. Thorpe, ___ R.I. ___, 429 A.2d 785 (1981)	8
Stirpano v. State, 287 A.2d 394 (Del. 1972) ...	8
Sullie v. State, 379 N.E.2d 455 (Ind. 1978)	10
Taylor v. Kentucky, 436 U.S. 478 (1978)	8,11
Terry v. Ohio, 392 U.S. 1 (1968)	15

<u>Cases</u>	<u>Pages</u>
United States v. Atkins, 487 F.2d 257 (8th Cir. 1973)	8
United States v. Christy, 444 F.2d 448 (6th Cir. 1971), cert. den. 404 U.S. 949	8
United States v. Cotten, 10 M.J. 260 (CMA 1981)	8
United States v. Davis, 328 F.2d 864 (2d Cir. (1964)	10
United States v. Harris, 346 F.2d 182 (4th Cir. 1965)	10
United States v. Magnano, 543 F.2d 431 (2d Cir. 1976), cert. den. 429 U.S. 1091	8
United States v. Rodriguez, 585 F.2d 1234 (5th Cir. 1978)	8
United States v. Smith, 468 F.2d 381 (3d Cir. 1972)	8
United States v. Wright, 542 F.2d 975 (7th Cir. 1976) cert. den. 429 U.S. 1073	8
Woodson v. North Carolina, 428 U.S. 280 (1976).	5
Zant v. Stephens, U.S. ___, 103 S.Ct. 2733, 77 L.Ed.2d 225 (1982)	13,14,15,16
<u>Federal Statute:</u>	
28 U.S.C. §1257 (3)	1
<u>State Statutes:</u>	
S.C. Code §16-3-20	2,4,6,16
S.C. Code §16-3-25	4,6
S.C. Code §16-3-910	15
<u>Constitutional Provisions:</u>	
U.S. Const. Amend. VIII	2,5,6,7,16
Amend. XIV	2,5,6,7,11

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PETITION FOR A WRIT OF CERTIORARI
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Petitioner Sylvester Adams prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of South Carolina in this case.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of South Carolina is as yet unreported. The slip opinion, State v. Adams, Opinion No. 21942 (S.C., June 29, 1983), is reproduced in the Appendix to this petition at A-1 to A-11. The per curiam order of the Supreme Court of South Carolina dated December 8, 1982, denying petitioner leave to argue for overruling or modification of the prior decisions of that court pertinent to the issues raised by this petition is unreported, and is reprinted in the Appendix at A-17. The per curiam order of the South Carolina Supreme Court dated August 3, 1983 denying rehearing of petitioner's appeal is unreported.

JURISDICTION

The judgment of the South Carolina Supreme Court was entered on June 29, 1983. A timely petition for rehearing was denied on August 3, 1983. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3), petitioner having asserted below and asserting herein deprivation of rights secured by the United

States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Eighth Amendment to the Constitution of the United States, which provides in pertinent part:

"...nor cruel and unusual punishments inflicted..."

and the Fourteenth Amendment to the Constitution of the United States, which provides in pertinent part:

"No state shall...deprive any person of life, liberty or property without due process of law..."

2. This case also involves S.C. Code §§16-3-20 et seq. (1982 Cum. Supp), which statutory provisions are set forth in the Appendix to this petition at A-19.

STATEMENT OF THE CASE

The petitioner Sylvester Adams was convicted and sentenced to death in a South Carolina state court for the murder of his next door neighbor. The state's case was to the effect that petitioner had broken into the victim's home in search of money, and that he kidnapped and ultimately strangled the victim, a youth of seventeen, when the latter returned home from school. The state's primary evidence was a confession obtained from petitioner by police several days after his arrest, and the testimony of a teenage witness, James Jeter, who claimed to have observed the break-in and subsequent kidnapping.

Jeter's credibility was open to some doubt due to his own criminal record, and to his failure to report what he claimed to have seen for nearly two days after the crime, and a day after the victim's body had been found. Petitioner testified in his own behalf and asserted that the confession had been written by the police based on information supplied by Jeter, and that he had been coerced into signing it against his will. Petitioner is black, and the police officers whom he alleged to have forced him to sign the confession are white.

Prior to the jury's deliberations on the issue of petitioner's guilt or innocence, the trial judge gave the following instructions:

The state does have the burden of proving the defendant guilty beyond a reasonable doubt on each indictment. I charge you that the defendant is entitled to any reasonable doubt arising in the whole case or arising on any defense that may have been set up by the defendant. If upon the whole case you have a reasonable doubt as to the guilt of the defendant, he's entitled to that doubt and would be entitled to an acquittal... Now I do not mean, ladies and gentlemen, by the term reasonable doubt that it is some whimsical or [sic] imaginary doubt. It is not a weak doubt, it is not a slight doubt. It is a substantial doubt, a doubt for which you give a reason. It is a substantial doubt arising out of the testimony or lack of testimony in the case for which a person honestly seeking to find the truth can give a reason. If you have such a doubt in your mind as to whether the State has proven this defendant guilty, you should resolve that doubt in his favor and write a verdict of not guilty and acquit him.

State v. Adams, Opinion No. 21942 (S.C., June 29, 1983), Trial Transcript (hereinafter designated as "Tr.") at 1199-1200. Later the trial judge returned to this subject with the following additional instructions:

As I think I've indicated to you reasonable--what reasonable doubt means: I would tell you that the two phrases reasonable doubt and proof to a moral certainty are synonymous and the legal equivalent of each other. These phrases connote, however, a degree of proof distinguished from an absolute certainty. The reasonable doubt that the law gives the accused is not a weak or a slight doubt, but a strong and well-founded doubt as to the truth of the charge.

Tr. 1210-11.¹ After receiving these instructions, the jury returned verdicts of guilty on all charges.

¹Apparently anticipating these instructions, the prosecution had sought in jury argument to maximize their effect by making the following statements:

The burden of proof is on the State to prove this man's guilt beyond a reasonable doubt... Therefore you have to know what a reasonable doubt is. The best way to explain what a reasonable doubt is is to tell you what it is not. It's not a whimsical doubt, it's not something fanciful, that's what it's not. It's a doubt for which you can give a good substantial reason. When you look in the mirror you can say, I have a doubt for which I can give a good substantial reason...

A reasonable doubt is a solid, substantial doubt for which you can give a reason. Now you might have a doubt whether it's snowing outside right now. Now that's a fanciful doubt because you know it's not snowing, you know it's not. We're talking about a solid substantial doubt. It's not a rock that this defendant can hide behind.

Tr. 1121, 1131.

Subsequently, a separate sentencing hearing was held pursuant to S.C. Code §16-3-20 (1982 Cum. Supp.) to determine whether petitioner should be sentenced to death or to life imprisonment. S.C. Code §16-3-20(C) provides that a capital defendant may not be sentenced to death unless the sentencing authority first finds the existence of at least one statutory aggravating circumstance to have been proven beyond a reasonable doubt. In his sentencing instructions, the trial judge did not undertake to redefine the concept of reasonable doubt, relying instead on the definition previously given at the guilt-or-innocence stage of petitioner's trial. The jury found that the existence of two statutory aggravating circumstances had been proven beyond a reasonable doubt, and sentenced petitioner to death. Tr. 1312, 1448.

On appeal to the South Carolina Supreme Court, the sentence of death was affirmed. South Carolina's capital sentencing statute requires that the state supreme court, in reviewing a sentence of death, determine inter alia whether the sentence of death under review "is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." S.C. Code §16-3-25(C)(3) (1982 Cum. Supp.). Following its invariable practice under this statutory provision, the South Carolina Supreme Court compared petitioner's case only with other murder cases in which the death penalty had been imposed at trial and affirmed on appeal, and did not consider any cases which may have been factually similar to petitioner's but which did not result in imposition of the death penalty.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

1. Reasonable doubt instructions. Petitioner objected at trial to the trial judge's definition of reasonable doubt. Tr. 1214.² On appeal, he alleged error by the following exception:

²Trial counsel's objection did not specify a federal constitutional basis, and focussed on the use of the word "substantial" only. However, such an objection was more than adequate to preserve the issue for appellate review, since South Carolina has no contemporaneous objection rule in capital cases, and permits assignments of legal errors in such cases to be raised for the first time on appeal. State v. Adams, 277 S.C. 115, 283 S.E.2d

The trial judge erred in defining the term "reasonable doubt" for the jury as "a substantial doubt, a doubt for which you can give a reason," and as "a serious or strong and well-founded doubt as to the truth of the charge." This definition was error because it so diluted the reasonable doubt standard as to violate appellant's Fourteenth Amendment right to put the state to its burden of establishing his guilt by proof beyond a reasonable doubt, and his Eighth Amendment right to special reliability in the determination of both guilt and punishment in a capital case.

Exception No. 8, Tr. 1450-51. Because this definition of reasonable doubt had been approved in a series of prior decisions of the South Carolina Supreme Court, State v. Coleman, 20 S.C. 441, 455 (1883), State v. Senn, 32 S.C. 393, 404, 11 S.E. 292 (1890), State v. Starnes, 213 S.C. 204, 49 S.E.2d 209, 214 (1948), State v. Butler, 277 S.C. 452, 290 S.E.2d 1 (1982), State v. Copeland, ___ S.C. ___, 300 S.E.2d 63 (1982), petitioner was obligated under Rule 8, §10 of the Rules of the Supreme Court of South Carolina to petition for leave of the court to argue that these prior decisions should be overruled or modified. In his petition, under Rule 8, §10, petitioner sought leave to argue that the definition of reasonable doubt given in this case violated

the Due Process Clause of the Fourteenth Amendment, In re Winship, 397 U.S. 358 (1970), or in the alternative that they violated the Eighth and Fourteenth Amendments' requirement of special reliability in the process by which guilt or punishment are determined in a capital case. Beck v. Alabama, 447 U.S. 625 (1980), Woodson v. North Carolina, 428 U.S. 280 (1976), Butler v. South Carolina, ___ U.S. ___, 32 Cr.L. 4036, 4037 (Marshall, J., dissenting from denial of certiorari).

State v. Adams, supra, Petition to Argue for Overruling or Modification of Precedent #1, reprinted infra at A-12. By order of December 8, 1982, the South Carolina Supreme Court denied the petition, thus foreclosing further briefing or argument on the reasonable doubt issue. Infra, A-17. The opinion of the court affirming petitioner's convictions and death sentence does not refer to the propriety of the reasonable doubt instructions. State v. Adams, Opinion No. 21942 (S.C., June 29, 1983).

2. Limited scope of appellate proportionality review. During the pendency of petitioner's appeal, the state supreme court held in another capital case that "the Eighth Amendment to the

U.S. Constitution does not mandate any mode of appellate review [of death sentences], nor even appellate review as such," and that the comparative review provision of S.C. Code §16-3-25(-C)(3), far from being constitutionally required, represents "an act of legislative grace by the [South Carolina] General Assembly which we are required to interpret in accordance with sound rules of statutory construction." State v. Copeland, ____ S.C. ____, 300 S.E.2d 63, 74 (1982). The state court in Copeland then went on to articulate its belief that only cases where death sentences had been imposed and affirmed on appeal provided suitable bases for comparison, Id. at 74-75, and after determining that this form of review revealed the existence of no case "similar" to those committed by the defendants in the case before it, the court affirmed the death sentences in that case. As required by Rule 8, §10 of the Rules of the Supreme Court of South Carolina, petitioner submitted a petition for leave of the court to argue for overruling or modification of Copeland

to the extent that this decision interprets both S.C. Code §16-3-25(C)(3) and the Eighth and Fourteenth Amendments as not requiring, in this Court's exercise of its comparative review of death sentences, that the death sentence under review be compared with other factually similar cases, regardless of whether or not the death penalty was imposed. Appellant seeks leave to argue that this Court's construction of its comparative sentence review function under S.C. Code §16-3-25(C)(3) renders S.C. Code §§16-3-20 et seq. violative of the Eighth Amendment's requirement that "capital punishment be imposed fairly, and with reasonable consistency, or not at all." Eddings v. Oklahoma, ____ U.S. ____, 102 S.Ct. 869, 875 (1982), Furman v. Georgia, 408 U.S. 238 (1972).

By order of December 8, 1982, the South Carolina Supreme Court denied the petition, thus foreclosing further briefing or argument on the constitutionality of South Carolina's method of proportionality review. Infra, A-17. The opinion of the court affirming petitioner's death sentence reflects that the court followed the principles set down in Copeland by considering only affirmed death sentences as "similar cases" within the meaning of the statute. Petitioner's constitutional challenge to this method of sentence review was not discussed in the court's opinion. State v. Adams, Opinion No. 21942 (S.C., June 29, 1983), infra at

A-9-11.

REASONS FOR GRANTING THE WRIT

I.

THE COURT SHOULD GRANT THE WRIT TO DETERMINE WHETHER, IN THIS CAPITAL CASE, THE TRIAL COURT'S DEFINITIONS OF REASONABLE DOUBT SO DILUTED AND WEAKENED THAT PRINCIPLE AS TO HAVE EXCEEDED THE LATITUDE ENJOYED BY STATE COURTS IN INSTRUCTING JURIES CONCERNING FUNDAMENTAL RIGHTS GUARANTEED BY THE EIGHTH AND FOURTEENTH AMENDMENTS.

The Due Process Clause of the Fourteenth Amendment "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970). "In the administration of justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." Estelle v. Williams, 425 U.S. 501, 503 (1976). This case presents the question of whether, in a capital case, jury instructions which purport to define the reasonable doubt standard can so dilute the protection afforded by that constitutional guarantee as to violate the Eighth and Fourteenth Amendments.

In advancing this argument, petitioner recognizes the limited scope of this Court's review of claims of error in state criminal trial instructions such as those at issue here. His claim is not merely that each of the definitions of reasonable doubt given in this case, when viewed in "artificial isolation," are "undesirable, erroneous, or even 'universally condemned.'" Cupp v. Naughten, 414 U.S. 141, 146 (1973). Rather, he submits that the cumulative effect of the whole series of such instructions given here was to relieve the prosecution of the burden of proof imposed upon it by the Fourteenth Amendment. In re Winship, supra. He further contends that even if the dilution of the reasonable doubt standard which occurred here might have been constitutionally tolerable in a non-capital case, it nevertheless violated the Eighth Amendment's prohibition of any procedure which unnecessarily reduces the accuracy of the jury's determination of guilt in a death penalty case. Beck v. Alabama, 447 U.S. 625 (1980).